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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,804	12/09/2003	Bernard Leon Bensussan	1331.038USU	2702

7590 07/12/2007
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EXAMINER

GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

MAIL DATE	DELIVERY MODE
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07/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/730,804	Applicant(s) BENSUSSAN, BERNARD LEON	
	Examiner Ernesto Garcia	Art Unit 3679	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

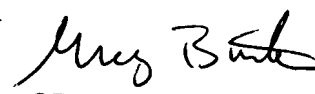
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.


GREGORY J. BINDA
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argument with respect to the premature final has been considered and deemed unpersuasive. The reference and the statute applied are the same as previously applied. Applicant argues that the way in which the reference was applied was changed and such a change was not necessitated by Applicant's amendment or filing of an IDS. In response, the argument is noted, but nothing in the rules provides that such clarification of the same rejection in view of any argument presented by the applicant cannot be made and not make the rejection final when the same ground of rejection is applied. Further, the examiner has provided clear reason for the rejection made and stated in the Office action. If applicant found an error by the examiner to properly communicate the basis of the rejection in the Office action, the error should have been presented to the examiner's attention within the time period for response. In any event, the final rejection is not premature.

With respect to the art rejection, applicant argues that the spring 43 in Coutts is not "disposed around the outside of said housing" so that pin 41 is "normally biased through" slot 40 into a second part as claimed. In response, it should be first noted that the second part is not claimed but inferentially recited as stated in the preamble, i.e., "for connecting a first part to a second part". Further, applicant even admits at the bottom of page 3 of the remarks that "the spring 43 of Coutts is disposed around the outside". Accordingly, the rejection establishes that the locking member is disposed around the outside of the housing between the pair of retaining rims. See the rejection. If applicant cannot see this or needs further clarification, applicant is advised to consult the examiner via phone.

Applicant further argues that the spring 43 is normally biased over pin 41. In response, the examiner has noted this analysis but the argument is not commensurate with the scope of the claims. It should be further noted that rejected claim 22 does not state that the "spring is biased through said opening in the housing" but rather "said tab is normally biased through said opening". Thus, the tab is biased and not the spring as compared against Coutts. Applicant further makes reference to col. 2, lines 20-60 of Coutts as to the operation. In response, it should be noted that the method of operation is not being patented nor claimed but rather the structure of the connecting member. Therefore, the argument is still not commensurate with the scope of the claim.

Applicant argues that the Office action fails to assert what portion of Coutts is the "second part". In response, again, the second part is not part of the claimed invention and therefore any argument relating to the structure of the second part is irrelevant. When the claim positively recites the second member as in "comprising: a second member" and the preamble modified, the examiner will revisit the argument. In the present time, only the connecting member is claimed without the second member. Accordingly, if the reference meets the claimed structure it will inherently function as disclosed. Nothing in the rejected claim 22 makes a connecting member different from Coutts. If applicant believes that the operation is different, applicant is advised to file for a method of operating a connecting member.